NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. GORDON SOLOMON GIBSON, Defendant-Appellant.	No. 99-30169 D.C. No. CR-98-05426-JET MEMORANDUM[1]

Appeal from the United States District Court
for the Western District of Washington
Jack E. Tanner, Senior District Judge, Presiding

Submitted May 22, 2000[2]

Before: PREGERSON, FERNANDEZ, and WARDLAW, Circuit Judges.

Gordon Solomon Gibson appeals his guilty-plea conviction and 248-month sentence for one count of armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d), and one count of using and carrying a firearm during a crime of violence,

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

in violation of 18 U.S.C. § 924(c). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Gibson's counsel has filed a brief stating that he finds no meritorious issues for review and a motion to withdraw as counsel of record. Gibson has not filed a pro se supplemental brief.

In the *Anders* brief, counsel identifies three potential issues. The first issue involves whether Gibson knowingly and voluntarily entered a guilty plea. Our review of the record shows that the district court engaged in a comprehensive colloquy with Gibson in order to ensure that the plea was knowing and voluntary. *See* Fed. R. Crim. P. 11; *United States v. Longoria*, 113 F.3d 975, 977 (9th Cir. 1997) (purpose of Rule 11 provisions is to ensure plea is knowing and voluntary).

The second issue concerns whether the district court erred in sentencing Gibson under the "career offender" provisions of U.S.S.G. § 4B1.1 (1998). Because the presentence report, which was not objected to at sentencing, indicated that Gibson had twice been convicted of burglary of dwellings, the district court did not err in sentencing Gibson as a career offender. *See* U.S.S.G. §§ 4B1.1(B), 4B1.2(a)(2) (burglary of a dwelling is a crime of violence); *see also United States v. Wood*, 52 F.3d 272, 274-75 (9th Cir. 1995) (explaining requirements for determining whether an offense constitutes a "crime of violence").

Finally, counsel raises the potential issue that the district court erred by declining to depart downward based on Gibson's heart condition. As an initial matter, Gibson did not request a downward departure from the applicable guidelines range. Rather, he requested only that the sentence imposed be at low end of the applicable range based on his heart condition, and the district court sentenced him to the minimum sentence within the range. To the extent that Gibson's request at sentencing could be construed as a downward departure request, nothing in the record indicates that the district court believed it lacked authority to depart. Thus, we lack jurisdiction to review a discretionary refusal to depart downward. *See United States v. Webster*, 108 F.3d 1156, 1158 (9th Cir. 1997); *United States v. Garcia-Garcia*, 927 F.2d 489, 491 (9th Cir. 1991) (per curiam).

Our examination of counsel's brief and our independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 82-83 (1988), disclose no further issues for review. Accordingly, counsel's motion to withdraw as counsel of record is **GRANTED** and the judgment of the district court is

AFFIRMED.